

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EATON CORPORATION,

Plaintiff,

Case No. 03-74844

v.

District Judge George Caram Steeh

Magistrate Judge R. Steven Whalen

ZF MERITOR LLC., ARVINMERITOR
INC., and ZF FRIEDRICHSHAFEN AG,

Defendants.

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ORDER REGARDING RE-ISSUANCE OF LETTERS OF REQUEST

On April 3, 2007, this Court entered an order [Docket #201] granting the Defendants' motion to re-issue letters of request to the German Central Authority to take the depositions of Albert Albers and Michael Frey, both German nationals, under the Hague Convention. Both the Plaintiff's and the Defendants' original letters of request were rejected by the German Central Authority for reasons stated in this Court's April 3rd order.

The Plaintiff filed objections to the April 3, 2007 order, asking that the order be set aside or modified. On April 17, 2007, the District Judge denied the objections and the request to set aside or modify the April 3rd order [Docket #211].

Pursuant to the April 3rd order, the Defendants have submitted revised letters of request that comply with that order and address the infirmities in the original letters that were identified by the German Central Authority.

The Plaintiff has also submitted revised letters of request, removing the request for documents that the Central Authority found improper. However, the Plaintiff also added five additional paragraphs to Section 2 of its letters (“Nature and Summary of Proceeding and Summary of Facts”), specifically paragraphs 2 through 6. Those paragraphs purport to explain the Federal Rules of Evidence (which are not binding in German courts or proceedings), and, in paragraph 6, argue the necessity of asking the very “exploratory questions” that the Central Authority has already found improper under German Hague Convention law. The inclusion of these five paragraphs contravenes this Court’s order of April 3, 2007, as well as German law, and will ensure that the letters of request are again rejected by the Central Authority.

Furthermore, these improper paragraphs appear to flow from the Plaintiff’s attempt to preserve objections to the admissibility at trial of the deposition testimony of Albers and Frey. However, as clearly set forth both in this Court’s order of April 3, 2007 and Judge Steeh’s order of April 17, 2007, the Plaintiff is waiving nothing.

Accordingly, this Court will send the Defendants’ revised letters of request to the German Central Authority, but will not at this time send the Plaintiff’s revised letters of request.

The Plaintiff may, within 5 business days of the date of this Order, submit letters of request that comply with the April 3, 2007 Order, along with a mailing envelope, addressed to the German Central Authority, with postage paid for delivery via the United States Postal Service, Federal Express, or other carrier. Plaintiff’s failure to do so will constitute a waiver of its right to submit letters of request.

SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: May 18, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on May 18, 2007.

S/Gina Wilson
Judicial Assistant